

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MORGAN KUKOVEC,  
INDIVIDUALLY AND ON BEHALF OF  
ALL OTHERS SIMILARLY  
SITUATED,

*Plaintiff,*

v.

L'ORÉAL USA, INC.

*Defendant.*

Case No. 1:22-cv-03829

Honorable Martha Pacold

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**INITIAL JOINT STATUS REPORT**

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Plaintiff Morgan Kukovec (“Plaintiff”) and Defendant L’Oréal USA, Inc. (“Defendant”) (collectively, “the parties”) submit this status report pursuant to the Minute Order of August 12, 2022. (ECF Dkt. #10).

**I. Nature of the Case**

**A. Counsel of Record:**

- i. Plaintiff’s attorneys of record are:

**Foote, Mielke, Chavez & O’Neil, LLC**  
**10 W. State Street, Suite 200, Geneva, IL 60134**  
Elizabeth Christine Chavez (lead)(ecc@fmcolaw.com)  
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**Tycko & Zavareei**

Hassan A. Zavareei (hzavareei@tzlegal.com)  
Glenn Edward Chappell (gchappell@tzlegal.com)  
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- ii. Defendant's attorney of record is

**Paul Hastings LLP**

71 S. Wacker Drive, Suite 4500, Chicago, IL 60606  
Aaron Daniel Charfoos (Lead) (aaroncharfoos@paulhastings.com)

**B. Nature of the Claims:**

- i. Plaintiff brings this action seeking relief for alleged violations of the Illinois Biometric Information Privacy Act ("BIPA") related to the use of Defendant's Virtual-Try-On Tool. Defendant has not asserted any counterclaims.

**C. Major Legal and Factual Issues:**

- i. The major legal issues involved in this case are whether Plaintiff must be compelled to arbitrate her claims on an individual basis; whether the Complaint states a claim for relief under BIPA; whether Defendant maintained a written policy compliant with the specific requirements set forth under BIPA Section 15(a); whether Defendant informed the Plaintiff of the elements required by BIPA Section 15(b)(1) and (2); and whether Plaintiff executed a written release required under BIPA Section 15(b)(3). The major factual issues involved in this case relate to the functionality and technology powering Defendant's Virtual-Try-On Tool.

**D. Plaintiff seeks the following relief:**

- i. Finding that this action satisfies the requirements for maintenance as a class action as set forth in 735 ILCS 5/2-801, et seq. and certifying the class defined in the complaint;

- ii. Appointing Plaintiff as representative of the Class and the undersigned counsel as class counsel;
- iii. Entering judgment in favor of Plaintiff and the Class against Defendant;
- iv. Awarding Plaintiff and the Class liquidated damages of \$1,000 per negligent violation, \$5,000 per willful or reckless violation, or actual damages, whichever is greater, for each BIPA violation;
- v. Issuance of an injunction ordering Defendant to comply with BIPA going forward and disclose to Plaintiff and Class members whether Defendant possesses their biometric information, Defendant's uses of their biometric information, and Defendant's retention and destruction policies regarding Plaintiff and Class members' biometric data;
- vi. Awarding reasonable attorneys' fees and costs, including expert witness fees and other litigation expenses, as provided for in 740 ILCS 14/20; and
- vii. Such further relief as the Court deems appropriate.

**II. Jurisdiction: Jurisdiction over all claims asserted is based on diversity.**

- i. Plaintiff's claims arise under the Illinois Biometric Information Privacy Act, 740 ILCS § 14/1 et seq.
- ii. Plaintiff Morgan Kukovec is domiciled and resides in West Chicago, DuPage County, Illinois.
- iii. Defendant is incorporated in the State of Delaware with its principal place of business in New York, New York.
- iv. Jurisdiction is proper in this Court because Plaintiff is a citizen of Illinois and Defendant purposefully availed itself of the laws, protections, and advantages of

Illinois by conducting business in this State, and within every County in this State, with consumers like Plaintiff.

- v. The Court has personal jurisdiction over Defendant because it regularly conducts business in this District and/or under the stream of commerce doctrine by causing its products and services to be disseminated in this District, including the App downloaded and used by Plaintiffs.
- vi. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 (“CAFA”) codified as 28 U.S.C. § 1332(d)(2) because the claims of the proposed Class Members exceed \$5,000,000 and because Defendant is a citizen of a different state than most Class Members.

**III. Status of Service:**

- i. All parties have been served.

**IV. Consent to Proceed Before Magistrate:**

- i. At this time, the Parties do not consent to proceed before a Magistrate Judge.

**V. Pending Motions**

- i. Defendant filed a Motion to Dismiss on Friday September 23, 2022.
- ii. Plaintiff’s Response is due October 17, 2022.
- iii. Defendant’s Reply is due October 31, 2022.

**VI. Status of Settlement Discussions**

- i. The parties are not actively engaged in settlement discussions at this time.
- ii. The parties do not request a settlement conference at this time.

Dated: September 27, 2022

Respectfully submitted,

/s/ Aaron D. Charfoos

/s/Elizabeth C. Chavez

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Class*